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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,329	12/29/2000	Scott R. Lange	1443.001US1	7672

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EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1771

8

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,329

Applicant(s)

LANGE ET AL. 57

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-7
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recited the limitations "elastic film" and "elastic web". Claim 4 contradicts claim 1 since any dependent claims describing an elastic layer are limited to a nonwoven, not a film or web. Claim 5 recites the limitation "elastic web". Claim 5 contradicts claim 1 since any dependent claims describing an elastic layer are limited to a nonwoven, not a web.
3. Claim 10 recites the limitation "the elastic filaments". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8,11,12,14-29 and 31-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 4,741,944 to Jackson et al.

Jackson et al teaches a wet wipe configured as an elastic sheet joined to a non-elastic nonwoven web joined at least at two areas. A liquid is distributed within the resulting composite. Components of the liquid include a fragrance and/or a preservative (Abstract). The elastic sheet is an elastic nonwoven web of meltblown microfibers made of an ethylene vinyl acetate copolymer. The non-elastic web is a web of spunbonded microfibers (Col 4, lines 61-69). The copolymer used to make the elastic meltblown nonwoven web can be formed into a mixture with another polymeric material (Col 7, lines 7-10). The other polymeric material can include polymers of ethylene and propylene (Col 7, lines 22-25). The spunbonded fibers are made of polypropylene (Col 5, line 1). Examiner notes that the spunbonded web functions as a gatherable layer. The laminate obtained from unifying the elastic sheet and non-elastic nonwoven web can be configured as a wet wipe including an inner elastic sandwiched between two outer nonwoven non-elastic webs (Col 5, lines 20-27, 30-34). The basis weight of the elastic nonwoven web is from 30 to 50 grams per square meter (Col 13, Claim 7). The two outer non-elastic layers have basis weights of 10 to 20 grams per square meter (Col 14, Claim 14). Given the weights of the outer layers and inner layer, the weight per square meter of the composite ranges from 50 to 90 grams per square meter and thusly fall within the claimed per unit weights.

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Jackson et al fails to teach the claimed the elastic composite's density. However, since the elastic composite's durability, loft and elasticity are affected by its density, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have optimized the strength, loft and elasticity through the process of routine experimentation.

With regards to claims 1-3, 16-27, although Jackson et al does not explicitly teach the claimed CD tensile strength of the elastic composite, cup crush to density ratio and cup crush values, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic web bonded to a nonelastic nonwoven) and in the similar production steps (i.e. bonding elastic to nonelastic nonwoven at least at two points, and the nonelastic nonwoven is gathered between the bonding points) used to produce the elastic composite. The burden is upon the Applicant to prove otherwise.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-11, are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,741,944 to Jackson et al in view of US 5,200,246 to Sabee.

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Regarding claims 9-11, Jackson et al fails to teach that the elastic web has a uni-axial fiber orientation. Sabee is directed to composites having continuous elastomeric filaments that function to provide elasticity. Said composite is a web wherein the continuous elastomeric filaments are reinforced by intermingling of fibrous melt blown webs for interlocking of the said continuous filaments in the formation of a fibrous and continuous filament matrix (Abstract). The continuous filaments are arranged as a non-random laid web (Col 1, lines 8-15). Examiner notes that such parallel elastic filaments exhibit uni-axial stretch properties. In view of this teaching it would have been obvious for one of ordinary skill in the art at the time the invention was made to have manufactured the elastic web of Jackson et al according to a uni-axial filament construction as disclosed by Sabee motivated by the desire to improve the elastic web's elasticity.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,741,944 to Jackson et al in view of US 5,508,102 to Georger et al.

Jackson et al fails to teach that the elastic composite has two outer non-elastic nonwoven layers that are coform. Georger et al is directed to abrasion resistant nonwoven structures. The fibrous nonwoven is useful as a moist wipe (Abstract). The fibrous nonwoven is desirably abrasion resistant (Col 4, lines 13-24). The matrix of meltblown fibers is typically a matrix of meltblown polyolefin fibers such as polyethylene or polypropylene (Col 4, lines 25-34). Other material that may be integrated into the matrix includes cellulosic fibers (Col 4, lines 35-45). Such an abrasion resistant, low lint, high pulp content fibrous nonwoven structure is composed of (1) less than about 35%,

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total weight percent, meltblown fibers forming a matrix having a first exterior surface. A second exterior surface, and an interior portion; an (2) more than 65%, total weight percent, pulp fibers integrated into the meltblown fiber matrix so that the concentration of meltblown fibers adjacent each exterior surface of the nonwoven structure will contain about 65 to about 95% percent, by weight, and the concentration of meltblown fibers in the interior portion is less than about 35%, by weight (Col 5, lines 26).

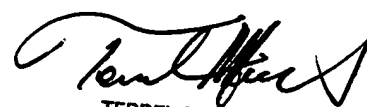
Examiner notes that such a nonwoven is coform. In addition, absent any mention of said nonwoven coform's elasticity, such a coform nonwoven is presumed non-elastic. In view of this teaching it would have been obvious for one of ordinary skill in the art at the time the invention was made to have replaced the non-elastic webs of Jackson et al with two nonwovens made of a matrix of polyethylene meltblown fibers and fibrous pulp fibers motivated by the desire to improve the abrasion resistance of the resulting elastic composite.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 9:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Terrel Morris, can be reached at (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


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